

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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WASHINGTON, D.C. 20554

In the Matter of

Implementation of the Telecommunications
Act of 1996

Telecommunications Carriers' Use of
Customer Proprietary Network Information and
Other Customer Information

CC Docket No. 96-115

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**BELL ATLANTIC'S REPLY IN SUPPORT OF PETITION
FOR RECONSIDERATION AND CONFIRMATION**

Only ADP opposes Bell Atlantic's¹ request that the Commission clarify and modify its decision implementing section 222(e).² And its opposition is only partial and misplaced.

First, ADP agrees that the new Rules do not create unlimited unbundling obligations of the type discussed in Bell Atlantic's petition.³ ADP agrees with Bell Atlantic that the unbundling obligations should only apply if a publisher requests "listings by geographic area such as NXX or zip code, or other reasonable criteria, or by service order activity, such as new connects only."⁴ ADP agrees that carriers are not obligated to unbundle in ways unrelated to their normal business operations. The Commission should confirm this and make it clear that the rule does not require unbundling beyond the type of unbundling that is described in the Order adopting the Rules.

¹ Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company.

² *Implementation of the Telecommunications Act of 1996*, Third Report & Order, Docket 96-115 (rel. Sept. 9, 1999) ("Order").

³ ADP at 4.

⁴ ADP at 4.

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Second, ADP also does not oppose Bell Atlantic's request that the Commission reconsider the requirement that a carrier notify publishers when subscribers change from published to non-published service. This shows that Bell Atlantic was correct when it said that no independent directory publisher would want or need such notification. Even MCI, whose broader request prompted the Commission to adopt this requirement, does not support it. There is no reason, therefore, for the Commission to maintain this requirement.

ADP does, however, oppose Bell Atlantic's request that a carrier be permitted to stop providing a publisher with listing information when the publisher misuses that information. ADP's arguments, however, demonstrate that the Commission *should* modify its rules.

ADP first claims that there is no need to give carriers this right because "misuse of SLI by directory publishers is not a widespread problem" and notes that "Bell Atlantic cites no examples of instances in which a publisher has misused SLI obtained from Bell Atlantic or any other carrier."⁵ This, of course, proves Bell Atlantic's point. Ever since Bell Atlantic began making this information available to independent publishers decades ago, publishers have known that Bell Atlantic had certain contractual rights. The contract limited what independent publishers could do with the information they received. Any other use would constitute a breach of contract and cause Bell Atlantic to stop providing the information. This effectively prevented any misuse, and did so without the need for any rules or regulatory involvement.

And, at least as important, these normal contract rules did not result in a history of anticompetitive abuse by carriers. Although this has been the practice in the industry for years, ADP does not cite a single instance of Bell Atlantic's, or any other carrier's, refusal to provide

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ADP at 3.

information because of a made-up claim that the publisher was misusing it.⁶ The normal contract approach has worked in real life, independent publishers have not been hurt by it, and there is nothing in the record to suggest that it should be changed.

ADP also disagrees with Bell Atlantic that the Commission's approach would leave a carrier without an effective remedy against a publisher.⁷ Notably, however, ADP does not disagree with Bell Atlantic's premise that the Commission cannot adjudicate a claim against a publisher because section 208 limits the Commission's complaint jurisdiction to common carriers.⁸ ADP claims that publishers would "respond promptly" to "inquiries" from "the FCC's Enforcement Bureau" staff because their "ability to receive SLI is at stake."⁹ But that's the point — the publisher would know quite well that its ability to receive information was not really "at stake" because the Commission is powerless to take any action against or impose any sanctions on an abusing publisher.

ADP says that the carrier's court and arbitration remedies are sufficient.¹⁰ The same, of course, could be said for the independent publisher which has those same remedies against a carrier that stopped providing subscriber information. But the publisher also has the additional and even more effective remedy to use the Commission and its processes to protect itself and secure relief — a remedy unavailable to the carrier. ADP itself does not really believe that courts

⁶ Nor did the Commission cite any in its order. See Order ¶ 115.

⁷ ADP at 3.

⁸ Nor does the Order suggest that the Commission believes that it could make a ruling against a non-carrier publisher. If the Commission does believe that it can provide a carrier relief against a publisher, it would be helpful to the industry if it would explain how.

⁹ ADP at 3.

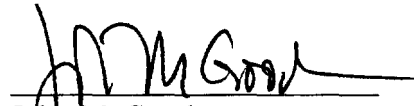
¹⁰ ADP at 3.

and arbitrators offer adequate remedies, as it is asking the Commission to enhance the remedies available to publishers at the Commission.¹¹

This provision of the Order is, therefore, unnecessary to protect honest publishers and invites abuse from unscrupulous firms, abuses that would involve the disclosure of information that subscribers believe would not be disclosed. There is nothing in the record to suggest that there is any need to change the normal contractual rules that govern the dealings between carriers and publishers, and the Commission should reconsider its decision to do so.¹²

The Commission should reconsider and modify these two parts of its order and confirm that the unbundling requirements are limited to those of the sort described in the Order.

Respectfully submitted,


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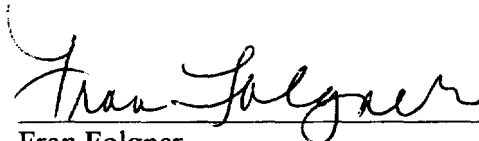
Dated: January 21, 2000

¹¹ In its own petition for reconsideration, ADP seeks to stack the deck in its favor even more by asking for interim relief in and accelerated handling of its members' complaints against carriers. ADP PFR at 2-3.

¹² Bell Atlantic has suggested other ways for the Commission to insure that the objectives of section 222(e) are satisfied, while giving carriers a way to protect the information their customers have given them. These include expedited procedures for handling section 208 complaints against carriers and requiring any carrier which decided to stop providing subscriber listing information to an entity to notify the Bureau of its plan.

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of January, 2000, copies of the foregoing "Bell Atlantic's Reply in Support of Petition for Reconsideration and Confirmation" were sent by first class mail, postage prepaid, to the parties on the attached list.



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* Via hand delivery.

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